

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Case No. C 08-00201 JW

Honorable James Ware

Bankruptcy Case No. 08-50030 (MM)

Chapter 11

Adv. Proc. No. 08-05006

**ANSWER TO COUNTERCLAIM BY  
PLAINTIFFS AND COUNTER-  
DEFENDANTS MAI CHRISTINA  
PHAM, JOHN PHAM, HUNG PERRY  
NGUYEN, JOYCE FREEMAN, AND  
CHRISTOPHER HAKE**

COMMUNITY LENDING, INCORPORATED, a  
California corporation, and Does 1 through 10,  
inclusive,  
  
Defendants.

1 Plaintiffs and Counter-Defendants Mai Christina Pham, John Pham, Hung Perry Nguyen,  
2 Joyce Freeman, and Christopher Hake (collectively "Plaintiffs") hereby answer the counterclaim  
3 filed by Defendant ComUnity Lending Inc. ("Defendant") as follows:

4 1. Answering Paragraph 1 of the Counterclaim, Plaintiffs admit that Plaintiffs were  
5 members of the "ComUnity Lending Inc. Non-Qualified Deferred Compensation Plan" ("Plan").  
6 Plaintiffs lack sufficient knowledge and information to form a belief as to the remaining matters in  
7 this paragraph and therefore deny such allegations.

8 2. Answering Paragraph 2 of the Counterclaim, Plaintiffs admit that Defendant was in  
9 the business of originating, brokering, servicing, and selling residential mortgages, that Defendant  
10 sometimes received origination fees for originating loans and management fees for servicing loans,  
11 and that Defendant did obtain and sell some REO properties. Plaintiffs lack sufficient knowledge  
12 and information to form a belief as to the remaining matters in this paragraph and therefore deny  
13 such allegations.

14 3. Answering Paragraph 3 of the Counterclaim, Plaintiffs admit that Defendant  
15 originated loans, funded them with short term warehouse lines of credits and then sold the loans.  
16 Plaintiffs lack sufficient knowledge and information to form a belief as to the remaining matters in  
17 this paragraph and therefore deny such allegations.

18 4. Answering Paragraph 4 of the Counterclaim, Plaintiffs lack sufficient knowledge  
19 and information as to the matters in this paragraph and therefore deny such allegations. However,  
20 Plaintiffs specifically note that Defendant's own financial statements indicate that Defendant was  
21 solvent and financially healthy as of August 31, 2007.

22 5. Answering Paragraph 5 of the Counterclaim, Plaintiffs admit that Defendant has  
23 filed a Chapter 11 bankruptcy. Plaintiffs lack sufficient knowledge and information to form a  
24 belief as to the remaining matters in this paragraph and therefore deny such allegations.

25 6. Answering Paragraph 6 of the Counterclaim, Plaintiffs admit that the Plan was  
26 commenced in 2001 and restated in 2003 and that its terms are governed by Exhibit 1 to the  
27 Verified Complaint. Plaintiffs further admit that a true and correct copy of the Trust Agreement  
28 dated September 1, 2003 ("Trust Agreement") is attached as Exhibit 2 to the Verified Complaint.

1 Plaintiffs admit that Plan funds were administered in an account with Transamerica. Plaintiffs lack  
2 sufficient knowledge and information to form a belief as to what information and belief Defendant  
3 may have about these documents, and further lack sufficient information and knowledge to form a  
4 belief as to all other matters in this paragraph, and therefore deny any such allegations.

5 7. Answering Paragraph 7 of the Counterclaim, Plaintiffs deny the allegations in this  
6 paragraph on the grounds that the documents speak for themselves.

7 8. Answering Paragraph 8 of the Counterclaim, Plaintiffs admit that this paragraph is  
8 an incomplete quotation from Paragraph 5.2 of the Plan that it is missing a quotation mark at the  
9 end.

10 9. Answering Paragraph 9 of the Counterclaim, Plaintiffs admit that this paragraph is  
11 an incomplete quotation from Paragraph 10.6 of the Plan.

12 10. Answering Paragraph 10 of the Counterclaim, Plaintiffs admit that this paragraph  
13 contains an incomplete quotation from Paragraph 1(d) of the Trust Agreement. Plaintiffs deny the  
14 remainder of the allegations in this paragraph on the grounds that Paragraph 3(a) of the Trust  
15 Agreement speaks for itself.

16 11. Answering Paragraph 11 of the Counterclaim, Plaintiffs admit that Defendant sent  
17 Plaintiffs an announcement of the termination of the Plan on September 7, 2007. Plaintiffs lack  
18 sufficient knowledge and information to form a belief as to the remaining matters in this paragraph  
19 and therefore deny such allegations.

20 12. Answering Paragraph 12 of the Counterclaim, Plaintiffs admit that Defendant has  
21 stipulated to keep the proceeds from the ComUnity Lending Inc. Non-Qualified Deferred  
22 Compensation Plan in two separate accounts and that Defendant will not commingle, use, transfer,  
23 pledge, encumber, grant a security interest in, or in any other manner dispose of or hypothecate  
24 those funds. Plaintiffs lack sufficient knowledge and information to form a belief as to the  
25 remaining matters in this paragraph and therefore deny such allegations.

26 13. Answering Paragraph 13 of the Counterclaim, Plaintiffs admit that Defendant filed a  
27 Chapter 11 case on January 4, 2008. Plaintiffs deny the remaining allegations in this paragraph.  
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14. Answering Paragraph 14 of the Counterclaim, Plaintiffs incorporate their answers to Paragraphs 1-13 of the Counterclaim.

15. Answering Paragraph 15 of the Counterclaim, Plaintiffs admit that there is an actual controversy between Plaintiffs and Defendant. Plaintiffs lack sufficient knowledge and information to form a belief as to the remaining matters in this paragraph and therefore deny such allegations.

16. Answering Paragraph 16 of the Counterclaim, Plaintiffs admit that Defendant contends that the funds from the ComUnity Lending Inc. Non-Qualified Deferred Compensation Plan are property of Defendant's bankruptcy estate.

17. Answering Paragraph 17 of the Counterclaim, Plaintiffs admit the allegations in this paragraph.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

1. As a First Affirmative Defense, Plaintiffs allege that the Counterclaim fails to state sufficient facts to state a cause of action upon which relief could be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

2. As a Second Affirmative Defense, Plaintiffs allege that Defendants' Counterclaim is barred by the doctrine of unclean hands.

#### **THIRD AFFIRMATIVE DEFENSE**

3. As a Third Affirmative Defense, Plaintiffs allege that Defendants' Counterclaim is barred by the doctrine of waiver.

#### **FOURTH AFFIRMATIVE DEFENSE**

4. As a Fourth Affirmative Defense, Plaintiffs allege that Defendants' Counterclaim is barred by the doctrine of estoppel.

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**FIFTH AFFIRMATIVE DEFENSE**

5. As a Fifth Affirmative Defense, Plaintiffs allege that Defendants' Counterclaim is barred by the doctrine of laches.

Dated: April 14, 2008

LINER YANKELEVITZ  
SUNSHINE & REGENSTREIF LLP

By: /s/ Matthew Borden  
Matthew Borden

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